

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

THOMAS E. PEREZ)
SECRETARY OF LABOR,)
UNITED STATES DEPARTMENT OF)
LABOR,)
)
Petitioner,)
)
v.)
)
ANTICO FOODS, LLC, and)
GIOVANNI DIPALMA,)
)
Respondents.)
_____)

Case No. 1:14-cv-3143-SCJ

DECLARATION OF NATHAN D. CHAPMAN

I, Nathan D. Chapman, state and depose as follows:

1. My name is Nathan D. Chapman. I am over the age of 18 and competent to give this Declaration.
2. This Declaration is given from my personal knowledge and a review of my files.
3. I am outside counsel for Antico Foods, LLC and Givoanni DiPalma (“Respondents”) in the above-captioned matter.

4. On October 2, 2014, my office requested that Petitioner, the Secretary of Labor (“the Secretary”) provide Respondents with a short extension of time to respond to the Secretary’s motion for a preliminary injunction and to attempt to reach a resolution of the disputed issues in this matter. [See D.E. 1.] Kristin Murphy, the Secretary’s counsel, denied Respondents’ request.

5. On October 2, 2014, I sent Ms. Murphy an e-mail correspondence requesting copies of the transcripts of depositions taken on October 1, 2014 of Mr. DiPalma and Antico’s accountant pursuant to Federal Rule of Civil Procedure 26. A true and correct copy of this e-mail is attached hereto as Exhibit A.

6. On October 3, 2014, I received an e-mail message from Ms. Murphy replying that she did not have the transcript and Rule 26 does not apply to this matter because the “application for a temporary restraining order and preliminary injunction concerns an on-going investigation. No complaint has yet been filed. It is not yet in discovery. . . .” A true and correct copy of this e-mail is attached hereto as Exhibit B.

7. On the morning of October 3, 2014, my colleague Michael Kabat and I attempted to reach Ms. Murphy by telephone to try and resolve this matter and avoid needlessly taking up this Court’s and the parties’ time and resources.

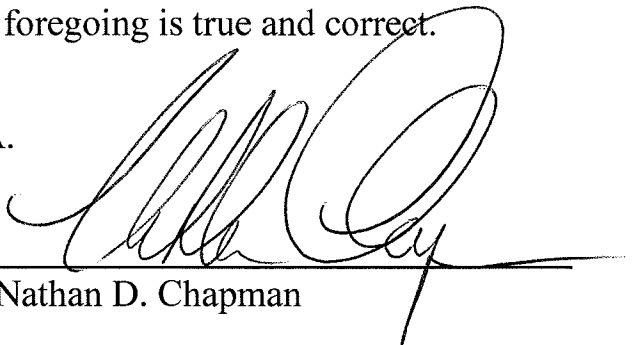
8. At approximately 10:30 a.m., I sent Ms. Murphy an e-mail transmitting a proposed consent order wherein Respondents would agree to substantially all of the relief requested by the Secretary in the above-referenced matter. I explained that the terms of the consent decree would obviate the need for a hearing on the matter. I asked that Ms. Murphy advise by 11:30 am whether the Secretary would agree to the attached consent order. A true and correct copy of this e-mail, along with the attachment, is attached hereto as Exhibit C.

9. At 11:30 a.m., Ms. Murphy replied, stating that she would provide revisions soon, which she provided at 12:28 p.m. and updated at 1:03 p.m.

10. The DOL would not consent to the relief set forth in Exhibit D.

Pursuant to 28 U.S.C. § 1746, I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: October 3, 2014, at Atlanta, GA.



Nathan D. Chapman

EXHIBIT A

From: Chapman, Nathan
Sent: Thursday, October 02, 2014 11:36 PM
To: 'murphy.kristin.r@dol.gov'
Cc: Kabat, Michael D.; Vivian, Priya
Subject: Perez v. Antico Foods LLC et al., Case No. 1:14-cv-3143

Importance: High

Ms. Murphy,

We represent Antico Food, LLC and Giovanni DiPalma in the above-referenced matter. Pursuant to Rule 26(b)(3)(C), we request that you immediately provide us with the deposition transcript of the deposition of Giovanni DiPalma, which we understand was taken on October 1, 2014.

Thank you,

Nathan D. Chapman
Wargo French
999 Peachtree Street, NE
26th Floor
Atlanta, Georgia 30309
Telephone: (404) 853-1535
Facsimile: (404) 853-1536
Email: nchapman@wargofrench.com
Website: www.wargofrench.com



From: Chapman, Nathan
Sent: Friday, October 03, 2014 12:09 AM
To: 'murphy.kristin.r@dol.gov'
Cc: Kabat, Michael D.; Vivian, Priya
Subject: RE: Perez v. Antico Foods LLC et al., Case No. 1:14-cv-3143

Ms. Murphy,

Pursuant to Rule 26(b)(3)(C), we also request that you immediately provide us with a copy of the transcript of the deposition of Jeffrey Lao, which we understand was also taken on October 1, 2014.

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Email: nchapman@wargofrench.com
Website: www.wargofrench.com



EXHIBIT B

From: Murphy, Kristin R - SOL <Murphy.Kristin.R@dol.gov>
Sent: Friday, October 03, 2014 9:46 AM
To: Chapman, Nathan
Cc: Kabat, Michael D.; Vivian, Priya
Subject: RE: Perez v. Antico Foods LLC et al., Case No. 1:14-cv-3143

Good morning,

We do not have the transcripts from these administrative depositions. I am including the information for the court reporter if you would like to order transcripts.

Please note that application for a temporary restraining order and preliminary injunction concerns an on-going investigation. No complaint has yet been filed. It is not yet in discovery, and Rule 26 does not apply.

Kristin R. Murphy
 Attorney
 U.S. Dept. of Labor
 61 Forsyth Street, SW
 Room 7T10
 Atlanta, Georgia 30303
 (678) 237-0613
 Fax: 404-302-5438
 Main Office: 404-302-5435
murphy.kristin.r@dol.gov

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Job No.	103744	Scheduled Date	9/23/2014 3:31:10 PM
Attn	Robin Davis	Attorney	Kristin Murphy
Firm	Department of Labor		
Style of Case	Antico Foods, LLC		
Witness(es)	Jeffrey Lao & Giovanni DiPalma		
Job Date	10/1/2014	Time	09:00 AM - 05:00 PM (GMT-05:00) Eastern Time (US & Canada)
Location Name	United States Department of Labor		
Location City, State	Atlanta, Georgia		
Remarks	Realtime: No Rough: No Expedite: No		

Video: No Opposing Counsel: N/A Trial Date: Unknown Rescheduled from 09/24/2014
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*More information for Job No. 103744 can be found in the Confirmation of Scheduling email sent to you upon booking or simply log in to Lit-Connect® at www.CapitalReportingCompany.com. If you cannot access Lit-Connect®, please give us a call.

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Cc: Kabat, Michael D.; Vivian, Priya
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Website: www.wargofrench.com



EXHIBIT C

From: Chapman, Nathan
Sent: Friday, October 03, 2014 10:32 AM
To: 'Murphy, Kristin R - SOL'
Cc: Vivian, Priya; Kabat, Michael D.
Subject: RE: Perez v. Antico Foods LLC et al., Case No. 1:14-cv-3143
Attachments: Antico- Consent Decree.DOCX

Kristin,

Please find attached our proposed consent order wherein Respondents will agree to substantially all of the relief requested by the Secretary in the above-referenced matter. We believe that the terms proposed therein obviate the need for a hearing on this matter.

Please let us know by 11:30 am whether the Secretary will agree to the attached consent order.

Thank you,

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Atlanta, Georgia 30309
Telephone: (404) 853-1535
Facsimile: (404) 853-1536
Email: nchapman@wargofrench.com
Website: www.wargofrench.com



From: Kabat, Michael D.
Sent: Friday, October 03, 2014 9:50 AM
To: 'Murphy, Kristin R - SOL'; Chapman, Nathan
Cc: Vivian, Priya
Subject: RE: Perez v. Antico Foods LLC et al., Case No. 1:14-cv-3143

Kristin, are you available for a call.

Michael D. Kabat, Esq.
WARGO FRENCH
999 Peachtree Street, NE
26th Floor

Atlanta, GA 30309
(404) 853-1515 (direct)
(404) 853-1516 (facsimile)
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FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

THOMAS E. PEREZ
SECRETARY OF LABOR,
UNITED STATES DEPARTMENT
OF LABOR

Plaintiff,

v.

ANTICO FOODS, LLC and
GIOVANNI DIPALMA,

Respondent

CIVIL ACTION FILE NO. 1:14-cv-
03143

[PROPOSED] CONSENT ORDER

Defendants Antico Foods, LLC and Giovanni DiPalma (collectively, “Defendants,”) have represented to this Court that they intend to hereby submit to the following consent order. Based on this representation, the Court therefore orders as follows:

Whereas, Defendants have read and reviewed the accusations against them in the Department of Labor’s (“the Department” or “DOL”) Temporary Restraining Order and Motion for Order to Show Cause Hearing On a Preliminary Injunction;

Whereas, Defendants deny the accusations and specifically deny interfering with any DOL investigation, deny that they have at any time intimidated or retaliated against any of their employees for participating with any DOL investigation;

Whereas, Defendants intend to continue to follow the law, cooperate with the DOL investigation, and to continue to not retaliate, intimidate, or interfere with any DOL investigation; and

Whereas, Defendants desire to resolve this matter expeditiously and without further delay and without further interruption to Defendants' business, Defendants agree as follows:

1. Defendants will not terminate or threaten to terminate, cause any employee to be deported or threaten to cause any employee to be deported, or retaliate or discriminate in any way against current and former employees of Antico Foods, LLC because an employee spoke with, or intends to speak with, a Department of Labor Wage and Hour investigator, filed a complaint with the Department of Labor, or otherwise participated in or cooperated with the Wage and Hour investigation currently being conducted of Antico Foods, LLC;
2. Defendants will not tell any employee not to speak to representatives of the Department of Labor or to provide false information to the Department of Labor or otherwise coerce or suggest to employees that they should make false statements regarding the terms and conditions of their employment;
3. Defendants will not obstruct the Department of Labor's investigation of Antico Foods, LLC in any manner;
4. Defendants will post a sign with the following language in the workplace:

You are protected by the Fair Labor Standards Act and have the right to participate freely in the U.S. Department of Labor's investigation into your employer's pay practices. You have the right to speak freely with investigators or other officials from the Department of Labor. Your employer is prohibited from retaliating and will not retaliate

against you in any way, including termination of your employment, because you spoke with the Department of Labor.

5. Giovanni DiPalma will not speak to employees of Antico Foods, LLC regarding any communication any employee has or will have with the Department of Labor about the pending investigation of Antico Food, LLC by the Wage and Hour Division.

SO ENTERED, THIS _____ OF OCTOBER, 2014

The Honorable Steve Jones
United States District Judge